The electronic monitoring of offenders

The electronic monitoring of offenders: penal moderation or penal excess?

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Abstract The technologies used in the electronic monitoring of offenders continue to develop, and next-generation "tags" will likely feature new capabilities. As the technology becomes more powerful, older criminal justice institutions and practices may appear increasingly anachronistic in one form or other, and their legitimacy called into question. Electronic monitoring systems may appear progressive alternatives to older forms of punishing. However, given the surveillant and controlling qualities of electronic monitoring systems, extending their use is in many respects troubling. This article seeks to examine the electronic monitoring of offenders in the light of the concepts of "penal moderation" and "penal excess", as well as to reflect on this sanction at the interface of the academic fields of the sociology of punishment and surveillance studies. It is argued that issues relating to intended aims and actual effects of the electronic monitoring of offenders go to the heart of contemporary debates and contradictions regarding penal purpose, the effects of the criminal justice system, electronic surveillance, and explanations of penal change.

Introduction

A question societies must decide today in respect of their criminal justice systems is whether to embrace the electronic monitoring of offenders with a view to enrolling substantially greater numbers of offenders on such programmes, or whether to oppose such an expansion. On the one hand electronic monitoring schemes may appear preferable to incarceration, for example, given what is known about the damaging effects of custodial sentences on offenders; yet on the other hand, the surveillant nature of the penalty, coupled with the likely greatly enhanced monitoring capabilities of the technology in the future, raise serious concerns as to whether we are ushering in an insidious and powerful new form of social control. Previous research has provided detailed discussion of the historical, organisational, legal and technical aspects of schemes for the electronic monitoring of offenders (see e.g. [35-37, 56, 57, 59, 66, 74]), and in this article I will instead seek to discuss wider considerations regarding the wisdom of future development of such schemes, and as such aim to contribute to wider debate on this topic (e.g. [10, 19, 34, 43, 61, 63, 65, 66, 70]).

The question as to the desirability or otherwise of the electronic monitoring of offenders can be separated out into various distinct issues, but here the argument is advanced through consideration of two themes that have attracted the attention of sociologists of punishment in recent years, namely penal "excess", of the kind often associated with "penal populism", and "penal moderation", a concept that has been proposed with the aim of fostering a more temperate penal climate. This article seeks to examine the electronic monitoring of offenders in the light of the concepts of "penal moderation" and "penal excess", as well as to reflect on this sanction at the interface of the academic fields of the sociology of punishment and surveillance

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studies. The structure of the argument is as follows. First, some contours of the nature of the problem with punishment today, as well as of the problems in analysing the same, are outlined. Second, the features of "penal moderation" are discussed, and consideration is given as to how the electronic monitoring of offenders might be consistent with such a philosophy. The notion of "penal excess" is then introduced, and the problems of excessive surveillance and of the threats posed by "penal-surveillant" measures are examined. The future of electronic monitoring is considered in the context of emerging trends and new theoretical accounts of penal policy. The article concludes by reflecting on some of the contradictions within electronic monitoring, and argues that it is indeed a "civilised" form of punishment (in Elias's sense), with all the irony that entails.

Imprisonment, sentencing and reconfiguring criminal justice

Today, around the world, a large number of offenders are in prisons, jails or other places of detention. One account of the apparent rise in punitiveness in many Western countries from the 1970s-2000s is in terms of the political appeal of "penal populism" [8], [73]. Whilst this term neatly captures certain qualities of what is undoubtedly a real phenomenon, it also has some analytic limitations: politically reactionary sentencing may be lenient rather than punitive [41]; it is not always clear whether the empirical features to which "penal populism" refers are to political machinations, popular or political discourse, the punitiveness of a sanction, or the numbers of people punished; and may lead us to overstate the extent of penal populism's actual appeal and political support, both within a particular society and internationally. While "penal populism" may today enjoy a "hegemonic" position in penal political ideology in some countries, even there, countervailing penal values retain some currency. If more progressive penal politics are to dominate, we may ask how a sufficiently powerful interest bloc can come together and subscribe to shared penal ideologies and values.

If there is an impetus toward penal change it may derive from growing public awareness of the consequence of current practices. There is no doubt that many offenders deserve to be incarcerated, and that many require detaining in order to protect the public. However, there are also reasons to suspect that not all of those detained need to be there, either for moral or public safety reasons. International comparisons of imprisonment rates reveal huge differences as between countries' reliance on prison, even as between those that are geographically close or might appear culturally similar [84], and increased public awareness of this could prompt a country to reassess its sentencing practices. Research on the consequences of imprisonment suggests that prisons have numerous harmful effects on prisoners and their families, both during imprisonment and post-release. Moreover, a high rate of recidivism by former prisoners suggests that prisons are not very successful at rehabilitating, and even that prisons may have a 'criminogenic' quality. A further, pressing argument for reducing the number of offenders sent to prison today is cost. Prisons are expensive [32, 55]. In addition to a high financial cost, public expenditure on prisons also represents an 'opportunity cost' (resources directed to prisons could have been directed instead to another area of criminal justice, or to education or health, for example). Such various considerations, while disparate, have the potential to feed into and offer momentum to reformist agendas.

Societal decisions regarding sentencing take place in the context of wider debates about and contemporary developments within criminal justice. The use of the money fine seems likely to change as electronic systems make it progressively easier to levy fines in an automated fashion, and is foreshadowed by the use of police-issued "on-the-spot" fines [67]. Community penalties continue to be used extensively, though face challenges ranging from how best to command public support to reconciling humanist ideology with technocratic practice (see for example [54]). Restorative justice could conceivably become more widely used than at present. Desistance research is shedding light on how best to support offenders in turning around their lives (see for example [83]). All the while, research suggests that even "welfarist" interventions can have negative effects on young offenders [53], which could prompt calls for further diversion strategies or even the scaling back of criminal justice apparatus as a whole. Public support for, and extent of use by sentencers of electronic monitoring take place within this wider context and in relation to what are perceived and permitted as appropriate option alternatives.

Two distinct (though in respects interrelated) processes may be identified here. The first is the empirical matter as to the decisions different societies make, the consequences that result, and how best to account for how these decisions and consequences came about. The second is the normative issue as to what decisions should be made. This distinction, between positive and normative accounts, is of course very familiar within social science, but is particularly useful to maintain when approaching the examination of questions of penal severity in general and the severity of electronically monitoring offenders in particular.

Penal moderation

Against the backdrop of the hegemony that punitive sentencing currently appears to enjoy in English penal politics, Loader has argued for greater "penal moderation" [45]. In his view, the key qualities of penal moderation as a philosophy of punishment are a commitment to the values of *restraint*, *parsimony* and *dignity*. He argues that these could serve as organising principles by which moderates might engage in penal policy formation and public debate surrounding punishment, with the aim of opposing the excesses of penal populism. He distinguishes between two possible strategies to this end, namely "moderation-by-stealth" and "moderation-as-politics", favouring the latter as a more principled and democratically accountable approach. At the time of its formulation, the idea of "penal moderation" sounded somewhat optimistic; its values of "restraint, parsimony and dignity" are liberal-sounding and, while deeply principled and attractive to some, seemed unlikely to command widespread popular support in relation to criminal justice. However, the general sentiment behind the notion of "moderation" does appear increasingly resonant with the times, and it is not impossible to imagine some future popular political ideology tapping into certain of its elements (for example, by conjoining a supposed trait of victor's mercy with national identity: "in *this* country we treat even our offenders with respect"). Bosworth, and Gartner et al., have explored the prospects for penal moderation in the United States [7, 28]. As Bosworth and others have pointed out, there are now some reasons to be hopeful, with various US states and countries now witnessing a decline in the number of people held in prison. If the first meaning (above) of the term 'penal moderation' was as a philosophy of punishment, these recent empirical developments draw our attention to the second possible meaning of the term, namely as a

sociological descriptor, referring to an apparent historical social shift (even if it is too soon to claim that we are entering the early stages of a historical period of penal moderation).

Electronic monitoring of offenders as penal moderation

Loader sets out in detail the principles underlying penal moderation, but leaves open the question as to how such principles might be realised. One sanction that could in theory be attractive to proponents of penal moderation is the electronic monitoring of offenders. Electronic monitoring schemes monitor offenders' compliance with some form of court order, for example a home curfew order, exclusion order, or drugs or alcohol abstinence order. The reasoning behind moderates' advocacy of electronic monitoring schemes could be as follows. Electronic monitoring represents a possible alternative to a custodial sentence for some offenders, thus reducing society's use of the prison. The sanction allows offenders to remain in their homes and communities, and alongside their families. It is "restrained" in that is a "thin" form of punishing, otherwise permitting normal activities during non-curfew hours. It is "parsimonious" not only because it is far cheaper than prison, but also because it involves only the partial deprivation of liberty. Lastly, it is "dignified" insofar as the monitored person is able to lead much of their life as normal.

More generally, electronic monitoring might be thought to represent a "low key" or even largely socially "invisible" form of punishing, one that does not rely on conspicuous display of public symbols for its effect. Perhaps the clearest respect in which electronic monitoring might be said to be "moderate" is in comparison to imprisonment, and in particular in the extent to which it is used expressly and effectively as an alternative to imprisonment and in recognition of the pains and damage prison inflicts on those sent there (which appears to be the case to some extent in Sweden, for example [10]). (This is not to say that its relative moderation renders it ethically unproblematic, and as Bülow notes various ethical issues remain [9].) Lastly, from a broader perspective, its use may have a certain social symbolism, representing a reformist attempt to improve upon the problems associated with established criminal justice institutions. Yet, while electronic monitoring might be considered a "moderate" and indeed "moderating" punishment in many respects, might it nevertheless introduce its own particular "excesses"?

Penal excess

In a discussion of the brutal "public torture lynching" executions carried out in some southern states in the US in the early decades of the twentieth century, David Garland draws attention to how cruel but also how taken-for-granted were those extra-judicial killings. Those executed invariably were black (accused of the rape or murder of white victims) and the spectators white. Photographs taken of the "mutilated black bodies, some of them horribly burned and disfigured, were purchased as picture postcards, and passed between friends and families like holiday mementoes, dutifully delivered by the U.S. mail" ([26], p. 794). These killings should be understood, he argues, as an attempt by white southerners to maintain racial domination in the face of the wider gradual erosion of their established way of living. Garland describes as "penal excess" the "self-consciously excessive retributive ritual… a strategic means

adopted by political actors to communicate meanings and sentiments" ([26], p. 801). "Penal excess" here thus captures what was almost a "war-like" ritual, communicating multiple cultural and "reactionary" political meanings through its grotesque defiance of established law and justice. (The mode of execution, we might add, is strangely reminiscent of that employed to execute Damiens as famously retold by Foucault in *Discipline and Punish* [21].)

Yet the phrase "penal excess" could be used in other ways as well. Whereas Garland uses the term to capture and make sense of extreme and torturous executions – in other words of the "quality" of punishment employed – one could also describe as "excessive" the practice of punishing a large proportion of a population, in other words a matter of "quantity", as is implied in the pejorative term "mass imprisonment". Punishment could further be said to be of "excessive" quantity insofar as a given penalty (for example, the sentence length or amount fined) was disproportionately severe given the moral wrong committed (see e.g. [81]). (As Frost points out, the distinction between these two meanings is not always made clear [22].) Alternatively, "excess" could instead be used to describe the highly negative "collateral" or "secondary" consequences of punishment, extending beyond the formal punishment itself, whether as experienced by individuals or by larger communities [52]. Another meaning again of the term could be to capture a quality of a punishment that was thought to be more severe than was required, for example as with deliberately stigmatising penalties designed to humiliate convicted offenders in public, or lengthy solitary confinement. The term could be used to describe the inappropriateness of prison for certain offenders, such as fine defaulters, young offenders, or female petty offenders [12]. Lastly, the term "penal excess" could be used to capture the application of the prison-like regimes used to prepare detainees (some of whom have never been convicted of a criminal offence, others of whom have already served their sentence) for deportation or to secure them for extended periods of time, as for example at Immigration Removal Centres, or Guantanamo Bay [6, 78, 79].

The term "penal excess" can therefore be seen to be a wide-ranging one, perhaps even one lacking in conceptual unity. However, its multiple meanings also are useful in this regard, offering us a way of identifying and exploring the consequences of punishment and of reflecting upon questions of proportionality and social acceptability.

Surveillant excess

In the field of surveillance studies, a number of authors have identified and charted the increased proliferation of surveillance technologies in recent decades (see e.g. [3, 47]). Theories of surveillance have been proposed; the meanings and implications of surveillance practices documented; the grounds on which surveillance might be opposed have been explored (for example the threat they pose to privacy, or their "chilling effects" on open political debate); and measures and frameworks designed to contain or regulate surveillance practices and systems have been developed [33]. It has been suggested, indeed, that the ubiquity of such technologies today makes ours a "surveillance society" [46].

Within surveillance studies, the particular topic of the electronic monitoring of offenders has not been especially widely discussed, perhaps because until relatively recently much electronically "tagging" involved simple RFID technology enabling

only rudimentary surveillance; perhaps because the targets of such punishment/surveillance are quite specific and relatively few in number (compared, at least, to the number of people whose Internet activities are routinely surveilled in one way or another); and perhaps because electronic monitoring has been discussed extensively and effectively in other academic fields, and in particular within criminology and criminal justice. Yet, arguably, the electronic monitoring of offenders stands at the intersection of these two academic domains.

While surveillance scholars do not generally use the language of "moderation" or "excess" (either normatively or positively) in relation to surveillance, there are nevertheless various points of linkage relevant to the present discussion. Broadly critical in stance, the field of surveillance studies generally stands in opposition to ever-expanding surveillant practices. The question of (excessive) scale is often referred to empirically (such as in an oft-mentioned statistic relating to the supposed number of CCTV cameras in the UK); while in theoretical understanding, tropes such as the "Big Brother" society [68], the "Panopticon" [21], the "surveillant assemblage" [31], or the "surveillance society" [46], allude to the use of surveillance technologies on a huge or even totalising scale. The development of digital communications and powerful computing systems has enabled governments to move from narrow "targeted" surveillance to general "mass surveillance" [49]. A notion of proportionality has however attended to legal and legislative attempts at constraining the "targeted" surveillance of individuals, with intensive surveillance of suspects (such as wire-tapping, or intercepting the contents of emails) requiring law enforcement to demonstrate proper need, and hence implying the recognition that some forms of surveillance may be "excessive" and hence unjustified. The advent of the era of "mass surveillance", as confirmed in spectacular fashion by Edward Snowden, a former private contractor who worked for the USA's electronic communications spy agency, the NSA, moves discussion relating to "excess" to include not just the degree of penetration into knowledge about citizens' personal lives, but also the surveillance of innocent citizens, with uncertain legal authority and oversight, and on an epic scale [30]. Forthcoming legal and political debates concerning such practices will likely involve consideration as to whether such mass collection of data is "excessive" (as it would certainly appear initially, at least in terms of scale), or if it is proportionate and justified where data are retained but only ever studied subsequently when there is good reason.

Penal-surveillant excess

There are arguably some parallels as between the studies of surveillance and punishment, in terms of establishing their degrees of apparent "excess", as well as establishing the normative and political grounds on which one might best oppose or attempt to restrict or "moderate" their use. However, consideration of the more substantive connection between criminology and surveillance studies in relation to electronic monitoring and questions of "acceptability" requires us to backtrack and consider how we are best to understand a sanction such as this that appears both punitive and surveillant. This requires us in turn to re-examine the "punitive" element of punishment. One line of argument here derives from Foucault, and proposes that, rather than assume "punishment" has a particular quality or essence, a better way to approach the topic is to ask how societies go about punishing at different times in history. As is well known, Foucault's own conclusion here was that punishment today

is “disciplinary” in kind, designed to establish and instil a gentle but powerful form of social (and self-) control [21]. Punishment today may superficially appear less “punitive” than in the past, but this masks its far greater surveillant powers of control. The broader point still is that “punishment” does not have an essence, and instead needs to be studied sociologically and empirically to establish its workings at a given place and time. Here, it may be found to be more or less obviously “punitive”, and may be inflected, or even dominated by other principles. For example, Donzelot shows how French probation work had a disciplinary-like judging quality, intruding into family life [18]. Garland has shown how “welfare” considerations came to inhabit the criminal justice system in England and Wales in the early twentieth century, forming the origins of probation and the “penal welfare” system [23]. Garland and Young have further argued for the “social” analysis of “penality”, the latter a term intended to refer to systems and practices involving punishment but not necessary reducible to (retributive) punishment alone [27].

Such an analytical perspective adds a nuance to one of the issues that has attended the electronic monitoring of offenders from the outset, namely as to what is its purpose (as Nellis once noted, it has often appeared “a technology in search of a problem” ([58], p. 140)). In the language of “sentencing rationales” (see e.g. [2, 38]) electronic monitoring might be seen to involve a mixture (in uncertain proportions) of “retribution” (deliberate infliction of hardship, here through restriction of liberty); “incapacitation” (of a virtual, self-compliant kind); “deterrence” (whether to the individual offender or to the general public); and “rehabilitation” (of a limited kind for now, by way of stabilising offenders’ otherwise chaotic lives; or through joining EM with more specifically rehabilitative treatment; and in the future possibly of a more involved kind [42]). It might even be seen to have some “restorative” qualities (serving a sentence in the community, and rebuilding social bonds). However, which of these dominate in practice, and hence are most characteristic of the sanction, may vary across time and place, and is thus a matter for empirical determination. Moreover, uncertainty or debate surrounding these goals, and the degree to which EM is seen to achieve them, may be “drivers” in directing the development of the sanction in one way or another. For example, it appears that in Victoria, Australia, a desire for greater retribution appears a factor in abandoning EM based on RFID tags, though may yet lead to the adoption of more “controlling” GPS-based systems; whereas in Scandinavia, more rehabilitative goals are apparent [10, 50].

In a recent and thought-provoking piece, Nellis notes that, in an age where many citizens are locatable via their mobile phones, “the state’s (or its commercial proxies’) capacity to pinpoint the whereabouts of a curfewed offender at night, or a tracked offender 24/7, is hardly, nowadays, the fearful spectre it would have appeared to George Orwell in the mid-20th century; it is simply a point toward the coercive end of a continuum of locatability”. Moreover, he reflects, “the question that arises is less ‘why would the state want to remotely monitor and manage offenders’ locations?’ and more ‘why would it not?’” [62]. The state’s desire to undertake a certain action does not however mean that it is right or socially desirable for it to do so. Indeed, in the light of recent revelations regarding mass surveillance, it may be that in the future the world’s citizens become altogether more cautious about the technologies they use, and demand privacy controls over their data (including geographic positional data). Similarly, we might acknowledge the desire of the state to obtain information on offenders, but seek to constrain the data obtained and how it was used only to that which is proportionate and strictly necessary.

The electronic monitoring of offenders might be said to be "excessive" in terms of the "excess" of data such surveillance generates, especially with regards to GPS systems and body-monitoring technologies. As surveillance and Internet activists have pointed out, geographic positional information can reveal much about a person's habits, associates, work, leisure activities and even religious beliefs. The latest tags can detect certain substances consumed by the tag-wearer; and future technology could involve additional biometric sensors or even subcutaneous tags [61]. It is not clear that much of the positional data, in particular, is necessary for compliance monitoring purposes, and one solution would be to restrict how much data is ordinarily available to or is retained by the monitoring agencies [19]. A further sense in which surveillant monitoring might be said to be excessive is in respect of the technocratic control system to which the monitored person is subject. Insofar as the tag is not removed and the monitoring system is comprehensive, there is an inescapability as to the surveillance, as well as a dehumanising quality [40]. The question of the sanction's "excess" is also tied up with its perceived severity and actual effects, and which may be experienced differently by different groups. One study found that "offenders saw prison as more punitive than EM", but also that "older offenders find EM more punitive than younger offenders" ([72], p.144; 145). Indeed, an earlier study found those monitored to experience numerous "pains" of confinement, some similar to those experienced by prisoners, and some additional ones specific to the sanction [71]. However, another study of tagged offenders found that although "most preferred electronic monitoring to prison, but this was not the case for all the offenders and every circumstance" ([80], p. 273). Tags and curfew hours seem designed for men, and may impact differently upon and indeed bear more stigma for female offenders [34]. Additionally, different monitoring systems may be experienced more or less punitively—for example, GPS "tracking" systems may feel more punitive to offenders than do those involving older and more rudimentary non-tracking tags.

There is a further way in which questions of "punishment" and "surveillance" are entangled in relation to EM and proportionality, namely in the case of their use in monitoring terror suspects. One of the spurs behind the development of "mass surveillance" in Western democracies appears to have been the 9/11 (2001) terror attacks, the subsequent bombings in Europe (in Madrid in 2004, and in London in 2005), and the fear of the possibility of future attacks both from overseas and domestically from within. In the UK, one initial government response was the detention without trial of terror suspects in a maximum-security prison. Ruled unlawful by the House of Lords, the government introduced "control orders", allowing people suspected of involvement in terror activities, even though not convicted in a court of law, to be subject to far-reaching restrictions including electronically-monitored home curfews of up to 16 hours each day [60]. In 2012 these measures were in turn replaced by "Terrorism Prevention and Investigation Measures" (or "TPIMs", as they have become known), which are more limited and scope and which expire after two years, but which still involve the electronically monitored imposition of curfews on suspected individuals, and which retain many of the earlier features of control orders [39].

This use of EM might appear a very particular case, and indeed the number of suspects currently so monitored in the UK is tiny (currently about 10 persons). Nevertheless, TPIMs arguably represent both a troubling case and a notable point of intersection. They are troubling because of their surveillant and punitive excess, since they are applied to suspects rather than convicted criminals. If the measures have been

moderated somewhat, this seems in large part due to the UK legal system and the European Convention of Human Rights. Ironically (and echoing some of the uncertainties discussed above), in the light of the absconding of some "controlees", some have criticised TPIMs as not being restrictive enough. The measures are notable, however, because they involve the use of electronic monitoring outside of conventional criminal justice, in a way that is pre-emptive and surveillant, and as such represent what Zedner has referred to as a "pre-crime" response to a perceived threat [85]. A central concern therefore is that this places in the hands of the Executive an unusual power, and one bearing an inescapably political quality.

Reducing prison populations?

One of the aims of the pioneers of electronic monitoring was none other than to "empty the world's prisons" [75]. Nellis points out that although such a claim could be read as proposing "'just another' alternative to custody", this would be to miss the utopianism that animated the broader project—even if this utopianism was of a technological kind and intertwined with various technological, military and economic infrastructural developments, and even if some of the end results, for example in relation to tagged sex offenders in the United States, could sometimes hardly appear more dystopian [64]. Following Lilly [44], Nellis argues that, "there was neither need, inclination nor likelihood of 'the complex' as a whole aligning itself with a prison reduction strategy, let alone the naïve abolitionism of Schwitzgebel (1964) or Toombs (1995), because many of its constituent parts have a continuing commercial stake in the expansion of imprisonment itself". If EM didn't expand as much as it might have done, then, this is in part due to the "vast…investment that the US still has in imprisonment" ([64], p. 183-4).

The optimism and vision of the prison abolitionism movement can seem distant today [5, 13, 51]. Yet, even if abolitionism is completely off the policy agenda, a raft of powerful critiques continues to be directed at the penal system, some inspired by abolitionism's original impulse. In the UK, Sim has forcefully levelled a far-reaching critique of the dismal prison system and the punitive politics that surround it, suggesting that the abolitionist voice is far from dead [76]. In the United States, Davis, Wacquant and Alexander have indicted the penal system and in particular its inescapably racial dimension [1, 16, 82]. Moreover, in that same country the death penalty's future now looks uncertain, which was not the case even a few years ago.

Yet today there are signs of change, and it is possible the era of the "culture of control" [25] is starting to give way to something else. Evidence suggests that the reasons why prison rates increased in certain countries (e.g. the United States) as from about 35 years ago may be due to the outcome of a mixture of harsher sentencing (e.g. mandatory minimum sentences) and more restrictive prisoner release regimes, set within the context of a more punitive social sentiment ([28], pp. 293-294). Yet, over the past decade or so, the prison population of some U.S. states has actually declined, most notably those of California and New York. Gartner et al., citing Greene and Mauer, suggest that where such change has come about it is because, "conscious efforts to change policies and practices . . . relied on many different types of reform initiatives . . . and had the twin goals of reducing the prison population and promoting cost-effective approaches to public safety" ([28], p. 295; [29], p. 2). Specifically, successful strategies have included moving away from mandatory minimum

sentencing and easing the rules by which released prisoners might be returned to prison for subsequent violations ([28], p. 295).

Penal reform campaigners may wish to advance policy by endorsing alternatives to imprisonment. Yet from a critical perspective, electronic monitoring would appear suspect for several reasons. In countries in which electronic monitoring is run by profit-led private security companies, its increased use may represent further expansion of the "crime control industry" ([14]). Its use might lead to "net-widening" rather than diversion away from prison (see [48]; [17], pp. 31-32; see also [15], pp.41-43). Most fundamentally, it replicates rather than replaces the logic underlying existing state institutional responses to socially undesirable behaviour. Even if greater use of EM were to lead to smaller prison populations, it would appear reformist rather than transformative in nature.

Indeed, recent research in the sociology of punishment suggests that rather than basing theories primarily on macro-level accounts, better explanations of comparative differences (in imprisonment rates, for example, can be found at a more local level and/or when these incorporate accounts of political processes [4, 11, 69]). If this is correct, such analyses pose both an opportunity and a challenge for advocates of electronic monitoring. The opportunity lies in the political possibility of driving uptake of the use of such sanctions through engagement at a regional or even very local level. The challenge is that where prison populations are already declining it is not clear that greater reliance on electronic monitoring is warranted, at least if the rationale for embracing the technology is as an alternative to prison.

Conclusion

Many years ago, Norbert Elias noted how societies seem subject to a very long term "civilising process", in which the twin mechanisms of state development and the prohibitions it enforced, along with internalised self-control, increasingly led people to become more "ashamed" of base behaviours than before. In turn, related conduct became ever-more refined, or more concealed from everyday life—more "civilised", in an ironic and hypocritical sense [20]. Spierenburg [77] and Garland [24] have shown how such a model can account for historical changes in penal practices. This has led to certain paradoxes, for example where societal support for the death penalty has been retained once more "civilised" killing techniques have replaced discredited older methods. The electronic monitoring of offenders features paradoxes of its own. It permits the close monitoring of offenders while allowing them to remain in their communities. It allows offenders a certain degree of autonomy and liberty. It can help protect potential victims. The sanction can work alongside rehabilitative measures. In some respects, electronic monitoring presents opportunities for the moderation of our penal systems. On the other hand, electronic monitoring brings with it surveillant practices that can only strike us as regrettable, and may represent the emergence of a control system whose future capabilities we do not yet know. As technology progresses, as it inevitably will, the monitoring systems will become smaller, more discreet and less visibly stigmatising—and yet somehow even more insidious as a result. But there are perhaps deeper contradictions still. There seems a technological inevitably that some form of monitoring technology will play a major role in penal systems in years to come, yet this technology seems set both to liberate and to subjugate. We may avail ourselves of new schemes and systems only to find these warped by institutional or commercial imperatives. And, just as we "civilise" our

punishment with powerful technology, so it becomes ever more hidden and private: out of sight and out of mind, but no less punitive for all that.

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